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July 15, 2009

BY HAND

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings

JUL 15 2009

Part of
Public Record

Re: Docket No. 42115, *U.S. Magnesium, L.L.C. v. Union Pacific*
Railroad Company

Dear Secretary Quinlan:

Enclosed for filing in the above-referenced matter please find the original and ten copies of Union Pacific's Answer to USM's Complaint.

I have also enclosed an additional copy of Union Pacific's Answer to be date-stamped and returned to our messenger.

Thank you for your attention to this matter.

Sincerely,

Michael L. Rosenthal

Enclosures

cc: Thomas W. Wilcox

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



US MAGNESIUM, L.L.C.,

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY

Defendant.

Docket No. 42115

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UNION PACIFIC'S ANSWER TO USM'S COMPLAINT

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Attorneys for Union Pacific Railroad Company

July 15, 2009

U.S. MAGNESIUM, L.L.C.,
Complainant,
v.
UNION PACIFIC RAILROAD COMPANY
Defendant.

Defendant Union Pacific Railroad Company (“UP”) hereby answers the Complaint filed by Complainant U.S. Magnesium, L.L.C. (“USM”) in this proceeding. UP responds to the allegations in each separately numbered paragraph of the Complaint as follows:

2. UP admits that USM's facility at Rowley produces chlorine, which is the subject of USM's Complaint, and which UP transports in rail tank cars supplied by USM. UP denies the remaining allegations in Paragraph 2 because it lacks knowledge or information sufficient to form a belief as to their truth.

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remaining allegations in Paragraph 3 because it lacks knowledge or information sufficient to form a belief as to their truth.

4. UP admits that USM's Complaint lists seven geographic locations and that UP provides service to one or more chlorine receiver at each location. UP denies the remaining allegations in Paragraph 4 because the Complaint does not identify specific receivers to which USM intends to ship chlorine, and thus UP lacks knowledge or information sufficient to form a belief as to their truth. UP avers by way of further response that it provides some portion of the transportation to certain of the locations identified in the Complaint using lines owned by other carriers and/or switching service provided by another carrier.

5. UP admits that USM is required to provide certain information regarding the issue movements by 49 C.F.R. § 1111.(a). UP denies that USM has accurately specified the "One-way distance" and "Number of cars in 2008" of all of the issue movements and avers by way of further response that USM's Complaint does not identify specific receivers to which USM intends to ship chlorine. UP also denies that USM has accurately specified the "Number of cars expected in 2009" because it lacks knowledge or information sufficient to form a belief as to its truth.

6. UP admits the allegations in Paragraph 6, except that UP denies that Paragraphs 7 and 8 accurately summarize the parties' discussions.

7. UP admits that USM requested common carrier tariff rates and service terms for rail service to the seven destinations at issue in this case in a request dated January 16, 2009. UP also admits the allegations in the footnote to Paragraph 7, except that USM's purported reservation of rights and remedies states a legal conclusion to which no response is

required; to the extent that a response is deemed to be required, UP denies the allegations. UP denies the remaining allegations in Paragraph 7.

8. UP admits the allegations in Paragraph 8.

9. UP denies the allegations in Paragraph 9.

10. UP admits the allegations in Paragraph 10.

11. UP admits the allegations in Paragraph 11, except that UP denies that there are no railroad alternatives that constrain UP's pricing power over the movement of chlorine from Rowley to the seven destinations at issue in this case, and UP denies that a joint movement with BNSF would be uneconomic for USM and USM's customer in Los Angeles and avers by way of further response that USM's Complaint does not identify specific receivers to which USM intends to ship chlorine.

12. UP admits that numerous federal regulations affect the transportation of TIH commodities. UP denies the remaining allegations in Paragraph 12 because it lacks knowledge or information sufficient to form a belief as to their truth.

13. UP admits the allegations in Paragraph 13.

14. UP denies the allegations in Paragraph 14, except that UP admits that it could not prevail on the issue of whether there is qualitative evidence of effective competition from other carriers or modes of transportation for the movements of chlorine from Rowley to the seven destinations at issue in this case under the standards currently being applied by the Board.

15. UP admits that the common carrier rates established by UP in Tariff 4949 for transportation of chlorine from Rowley to the seven destinations at issue in this case produce revenues in excess of 180% of UP's variable costs of providing that transportation. UP denies the remaining allegations in Paragraph 15.

16. UP denies the allegations in Paragraph 16 because they relate to the process by which USM performed certain calculations and UP thus lacks knowledge or information sufficient to form a belief as to their truth.

17. Paragraph 17 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations this Paragraph.

18. Paragraph 18 states legal conclusions to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

19. Paragraph 19 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph. UP also denies that USM's Complaint lists nine destinations.

20. UP denies the allegations in Paragraph 20.

21. Paragraph 21 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

22. UP admits that, currently with the filing and service of the Complaint, USM provided UP with a document entitled "Disclosure Pursuant to 49 C.F.R. § 1111.1(B)."

In response to the Complaint's "WHEREFORE" clause (p. 11), including clauses numbered 1 through 4, UP denies that USM is entitled to any of the relief it seeks in this proceeding.

Respectfully submitted,



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Attorneys for Union Pacific Railroad Company

July 15, 2009

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 15th day of July, 2009, I caused a copy of Union Pacific's Answer to USM's Complaint to be served by hand and by e-mail on:

Thomas W. Wilcox
David K. Monroe
Jason M. Setty
GKG Law, P.C.
Canal Square
1054 31st Street, N.W., Suite 200
Washington, DC 20007

A handwritten signature in black ink, appearing to read "Michael L. Rosenthal", written over a horizontal line.

Michael L. Rosenthal